June 30. 1766.

Unto the Right Honourable the Lords of Council and Session,

THE PETITION OF

JOHN MURDOCH and *John Bowman* Merchants in *Glasgow*,

Humbly Sheweth,

THAT, upon the 15th of *January* 1708, the deceased *James Brock*, second son of the also deceased *Robert Brock*, adjudged from *John Brock*, his elder brother, a tenement of houses lying in the town of *Glasgow*.

To this *James Brock*, *Robert Brock* shipmaster in *Glasgow*, his immediate younger brother, was served heir in general before the Magistrates of *Glasgow*; and, upon the 7th of *October* 1737, he was infeft in the tenement above mentioned, which, upon the 15th of *April* 1749, he disponed to *Helen Brock* his sister-german; and failing her by decease, to *John Buchanan* younger, writer in *Glasgow*, her son, and to the now deceased *William Muir* and *Mary Muir*, lawful children of *Agnes Brock* another of his sisters.

The ſaid *Helen Brock* having died, and *Mary Muir* having been ſerved heir in general to her alſo deceaſed brother *William*, ſhe thought proper ſometime ago to bring a proceſs of reduction of all rights and diligences affecting or burdening the ſaid tenement, againſt the petitioners, who had been for ſome time in poſſeſſion thereof, in virtue of the titles to be hereafter mentioned.

This proceſs having come in courſe before the late Lord Juſtice Clerk, his Lordſhip was pleaſed, upon the 19th *January* 1764, to reduce, decern, and declare in abſence.

The petitioners, upon this, preferred a repreſentation, in which they objected to the purſuer's title, in reſpect that the ſubjects being conveyed to her, only upon the failure of *Helen Brock* by death, the adjudication, if ever *Robert Brock* had any right to it, was plainly veſted in the ſaid *Helen Brock*, and could not be taken up but by a ſervice to her. They alſo at the ſame time obſerved, that *Robert Brock* the purſuer's author, could not acquire any right to theſe ſubjects by a ſervice to his brother *James*, in reſpect that the ſaid *James* had, as early as the 29th of *April* 1709, diſponed the adjudication obtained by him, to *John Herbertſon* and *William Baxter*, the petitioners authors, who, upon the 14th of *February* 1722, obtained a declarator of expiration of the legal; in which declarator that diſpoſition, tho' now amiſſing, appears to have been produced.

Alongſt with this repreſentation, the petitioners produced the ſaid decreet of declarator of expiration of the legal, and an extract of a diſpoſition and aſſignation, dated the 29th of *April* 1709, by *James Brock*, of certain debts and other moveable ſubjects, in favour of

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the ſaid *William Baxter* and *John Herbertſon*, upon a narrative, that they were not only his creditors, but alſo ſtood bound and obliged, as cautioners for the ſaid deceaſed *Robert Brock* his father, to ſeveral other perſons his creditors, conform to ſeveral bonds and other writs granted therefor; and that the ſaid *William Baxter* and *John Herbertſon*, had advanced and delivered to him, at the making thereof, the ſum of 900 merks *Scots*; in which diſpoſition and aſſignation, it is *inter alia* declared, that he the ſaid *James Brock* had, of the date thereof, aſſigned and diſponed in favour of the ſaid *William Baxter* and *John Herbertſon*, their heirs, *&c.* a decreet of adjudication led and deduced by him againſt *John Brock* his eldeſt brother, for, and in payment to them of the ſums owing by his ſaid deceaſed father, and of the ſums advanced by them to him.

The Lord Ordinary appointed this repreſentation to be anſwered; but, notwithſtanding its containing an objection to the purſuer's title, ſhe never thought fit to make any anſwer to it; and the petitioners having in the mean time obtained diligences for recovering the writs called for, they did recover ſeveral deeds relative to the ſubjects in queſtion, out of the hands of *John Buchanan, jun.* writer in *Glaſgow*, who, when examined as a haver, deponed, That about 16 years ago he ſaw a diſpoſition granted by *James Brock* to the ſaid *John Herbertſon* and *William Baxter*, of ſundry conſiderable ſubjects, and amongſt the reſt, of the tenement in queſtion; and that he had likewiſe ſeen a note taken from the regiſter of ſaſines at *Glaſgow*, of an infeftment in favour of *Herbertſon* and *Baxter*, or in favour of ſome perſons deriving right from them.

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The rights recovered from the ſaid *John Buchanan* being lodged in proceſs, the purſuer, without taking any notice of the objection made to her title, did, upon the 26th *June* 1765, in abſence of the petitioners, get aviſandum made with the writs produced, and obtained a decreet of certification *contra non producta*.

This decreet of certification being extracted, a remit to the Lord *Auchinleck* Ordinary, to diſcuſs the reaſons of reduction, was obtained upon the application of the purſuer; and, the cauſe having been inrolled, his Lordſhip, upon the 29th of *January* laſt, was pleaſed, in abſence of the petitioners, "To ſuſtain the reaſons "of reduction; and find, reduce, decern, and declare, "in terms of the libel."

The petitioners preferred a repreſentation, praying a recall of this decreet in abſence; and, anſwers having been made thereto by the purſuer, his Lordſhip was pleaſed, upon the 17th current, to pronounce an interlocutor in the following terms: "The Lord Or-"dinary having again conſidered this repreſentation, "with the anſwers and extracted decreet of certifica-"tion, finds no ſufficient ground ſtated in the repre-"ſentation for altering the interlocutor repreſent-"ed againſt, and therefore adheres to it, and refuſes "the deſire of the repreſentation, reſerving to the re-"preſenters to apply to the whole Lords, to be re-"poned againſt the decreet of certification, if they be "ſo adviſed."

The petitioners muſt now beg leave to lay their caſe before your Lordſhips, and they are hopeful, that, when the nature of their right is attended to, you will have no difficulty of reponing them againſt the decreet of certification, that ſo they may be enabled to

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defend themſelves againſt the attack which the purſuer has thought fit to make againſt their property.

Your Lordſhips will then be informed, that, as the diſpoſition of the tenement in queſtion, by *James Brock* to *Herbertſon* and *Baxter*, is expreſsly ſaid to have been produced in the decreetof declarator of expiration of the legal, obtained upon the 14th of *February* 1722; ſo the petitioners have produced an extract ſaſine of the ſaid *William Baxter* and *John Herbertſon*, from which it appears that they were infeft upon the 22d of *July* 1709, in virtue of the decreet of adjudication obtained by the ſaid *James Brock*, and a diſpoſition thereof by him to them, dated the 29th of *April* preceeding.

The petitioners have likewiſe produced the following writs, *viz.* 1*mo*, A diſpoſition by the ſaid *William Baxter* to the deceaſed *John Bowman*, dated the 20th of *October* 1721; by which, upon a narrative that the ſaid *John Bowman* was bound as cautioner for him in many ſums therein ſpecified, he diſpones to him, his heirs, and aſſignees, a number of heretable ſubjects, and, amongſt the reſt, his juſt and equal half of the tenement in queſtion. 2*do*, A diſpoſition by the ſaid *John Bowman* to *William Bowman* his eldeſt ſon, of his half of the ſaid tenement. 3*tio*, An inſtrument of ſaſine; by which it appears, that the petitioner *John Bowman* was therein infeft upon the 20th of *May* 1740, as heir ſerved and retoured to the ſaid *William Bowman* his brother. 4*to*, A decreet of adjudication at the inſtance of *Peter Murdoch* againſt *John Herbertſon*, adjudging from him as lawfully charged to enter heir in ſpecial to the ſaid *John Herbertſon* his father, his juſt and equal half of the ſaid tenement, dated 6th *January* 1725, and inſtrument of ſaſine follow-

ing thereon: And, 5to, Diſpoſition thereof, by the ſaid *Peter Murdoch* to his ſon the petitioner *John Murdoch*, 7th *November* 1754.

The petitioners apprehend they have ſaid enough to ſatisfy your Lordſhips, that the purſuer can have no pretence to challenge their poſſeſſion; becauſe, as her right depends entirely upon the diſpoſition granted by her uncle *Robert Brock*, ſo the ſaid *Robert Brock* had no title to the adjudication in queſtion, which was conveyed by his brother *James* to the ſaid *Herbertſon* and *Baxter*, as above mentioned. It is true indeed, that this diſpoſition to *Herbertſon* and *Baxter* is now amiſſing, but as it is particularly narrated, not only in the decreet of declarator of expiration of the legal, but alſo in the other diſpoſition of the 29th *April* 1709 above ſtated, and as infeftment followed upon it, and the inſtrument of ſaſine is recorded in the town-books of *Glaſgow*, there can be little or no difficulty in proving its tenor, if the petitioners are allowed a competent time for that purpoſe.

It is with this view, that the petitioners make the preſent application to your Lordſhips, and they are hopeful that, upon conſidering the circumſtances of their caſe, you will have no difficulty of reponing them againſt the decreet of certification, and of recalling the Lord Ordinary's interlocutors of the 29th of *January* and 17th of *June*; and allowing the petitioners a competent time to prove the tenor of the diſpoſition by *James Brock* to *Herbertſon* and *Baxter*, by which the ſaid *James Brock* was effectually denuded of the adjudication upon which the purſuer pretends right to the ſubjects in queſtion.

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May it therefore pleaſe your Lordſhips to take the premiſſes into your conſideration, and 1mo, *To repone your Petitioners againſt the decreet of certification: And* 2do, *To allow them ſtill to be heard upon their objections to the Purſuer's title; and, for that purpoſe, to recal the interlocutors of the Lord Ordinary, pronounced upon the* 29th *of* January *laſt, and* 17th *of* June *current: And to allow the Petitioners a competent time for proving the tenor of the diſpoſition that is now amiſſing, granted by* James Brock *to* Herbertſon *and* Baxter *in* April 1709; *and to produce any other writs relative to the ſubjects in queſtion; or to remit the cauſe to the Lord Ordinary, with inſtructions to that purpoſe.*

According to Juſtice, *&c.*

ALEX. WIGHT.

ANSWERS

to

The PETITION of

Mary Muir, spouse to Robert Bridge merchant in Glasgow, and him for his interest.

THE petition of Mary Muir, spouse to Robert Bridge merchant in Glasgow, and him for his interest, humbly complains of an interlocutor of the Lords of Council and Session, Ordinary, who refused to grant warrant to cite witnesses for proving the tenor of a certain diligence, against the said Robert Bridge, at the instance of James Brock merchant in Glasgow, and Bowman his tutor, for production of the said diligence, and to produce the grounds and warrants thereof, and to hear and see the same declared null, and of no effect, in time coming, for the causes and reasons therein mentioned: That the petitioners, upon the 17th of June current, raised a summons of reduction before the Lords of Council and Session, against the said James Brock and Bowman, for reducing, decerning, and declaring the said diligence, and all that has followed thereupon, to be null and void